



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 155  
Seattle, WA 98101-3123

OFFICE OF THE REGIONAL  
ADMINISTRATOR

APR 25 2019

The Honorable Michael J. Dunleavy  
Governor of Alaska  
P.O. Box 110001  
Juneau, Alaska 99811-0001

Dear Governor Dunleavy:

Thank you for your letter dated March 22, 2019, to Mr. Andrew Wheeler, Administrator for the U.S. Environmental Protection Agency. We appreciate you taking the time to write to us about extending the planning and attainment deadlines applicable to the Fairbanks, Alaska, fine particulate matter (PM<sub>2.5</sub>) nonattainment area. Administrator Wheeler has asked that I respond to you on his behalf.

We acknowledge the particularly challenging air quality problems in the Fairbanks area due to periodic extreme cold weather, smoke that is produced when people burn wood to heat their homes, and other sources of PM<sub>2.5</sub>. We appreciate the hard work the Fairbanks North Star Borough and the Alaska Department of Environmental Conservation continue to undertake to identify and implement strategies to effectively reduce PM<sub>2.5</sub> concentrations. We also appreciate the ongoing communication and collaboration between the Borough, ADEC and the EPA, and we remain committed to providing technical assistance as you develop the Serious Area attainment plan. The EPA believes that this collaborative approach is critical to returning air quality to healthy levels throughout the entire nonattainment area.

In your letter and supporting memorandum, you requested that the EPA revise dates associated with the Serious Area attainment plan requirements. Specifically, you requested that the EPA establish a June 30, 2021, deadline for Alaska's Serious Area attainment plan submittal, and that the EPA establish a December 31, 2023, Serious Area attainment date. While we understand that extending these deadlines would further enable the state and the community to develop and implement control strategies for addressing PM<sub>2.5</sub> pollution in the area, the EPA lacks the authority to grant your requests.

Since initial designation on December 14, 2009, the statutory attainment date for the Fairbanks nonattainment area under the Clean Air Act (CAA) has been the date by which attainment can be achieved as expeditiously as practicable but no later than December 31, 2019. In response to the D.C. Circuit Court of Appeals' 2013 decision in *NRDC v. EPA* concerning proper implementation of the PM<sub>2.5</sub> NAAQS,<sup>1</sup> the EPA issued a rule extending the Moderate Area attainment plan submission date to avoid the imposition of a *retroactive* deadline, but otherwise noted that *prospective* statutory deadlines still apply.<sup>2</sup> The D.C. Circuit Court upheld this rulemaking with respect to extension of the already past statutory deadline for moderate areas based on the unique circumstances presented.<sup>3</sup> However, the Court made clear that the EPA does not have general authority to revise prospective statutory deadlines for submission of attainment plans or attainment dates of the CAA.<sup>4</sup> Therefore, the EPA does not have the

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<sup>1</sup> 706 F.3d 428 (D.C. Cir. 2013).

<sup>2</sup> *Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) and 2006 PM<sub>2.5</sub> NAAQS* (June 2, 2014), 79 Fed. Reg. 31,566, 31,567-68.

<sup>3</sup> *WildEarth Guardians et al. v. EPA*, 830 F.3d 529, 540-41 (D.C. Cir. 2016).

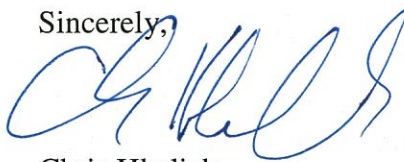
<sup>4</sup> *Id.* at 539 & 541.

regulatory authority under the CAA to revise the Serious Area attainment date or attainment plan submission deadline.

We understand that the ADEC is in the process of preparing the Serious Area attainment plan for public review and comment with the goal of submitting the plan before the end of this year. We are fully committed to supporting the ADEC and Fairbanks North Star Borough as they implement strategies within the plan to bring the Fairbanks nonattainment area into attainment.

Again, thank you for contacting the EPA on this important air quality issue. If you have any questions, please feel free to contact me or have your staff contact Krishna Viswanathan, Acting Director of the Air and Radiation Division. You can reach Krishna at (206) 553- 0218 or at [viswanathan.krishna@epa.gov](mailto:viswanathan.krishna@epa.gov).

Sincerely,



Chris Hladick  
Regional Administrator

OFFICE OF THE GOVERNOR  
STATE OF MONTANA

STEVE BULLOCK  
GOVERNOR



MIKE COONEY  
LT. GOVERNOR

April 29, 2019

The Honorable Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

2019 MAY -6 AM 11:46  
OFFICE OF THE  
EXECUTIVE SECRETARY  
RECEIVED

Dear Administrator Wheeler:

I would like to express strong concerns with the President's FY2020 Proposed Budget, and specifically with the cuts proposed for the U.S. Environmental Protection Agency. If this budget were to be enacted, your Agency will sustain a 31 percent reduction in funding, which I believe will dramatically diminish the Agency's ability to protect public health and the environment at levels the American people expect and deserve.

In the U.S., protection of public health and the environment depends on a strong co-regulatory partnership between EPA and the States. Yet, the President's proposed budget would serve to not only undermine EPA's abilities to perform the responsibilities on your side of that partnership, it would also drastically undercut States' environmental programs. For example, the 31 percent proposed cut to the U.S. EPA translates into a 40 percent hit to the federal funding to the Montana Department of Environmental Quality (DEQ). This agency relies on federal funding for over a third of its budget. A 40 percent reduction of funding from EPA is significant.

In addition, the President's proposed budget seems to run counter to the FY2018 – FY2022 EPA Strategic plan. Goal one includes improving air quality, providing for clean and safe drinking water, revitalizing land and preventing contamination, and ensuring safety of chemicals in the marketplace. Yet, the proposed budget makes cuts to these very programs. The Agency Priority Goals (APG) include a 50 percent reduction in the number of permitting-related decisions that exceed six months. The budget reductions included in the proposed budget are poised to increase the permitting-related decision time rather than shorten it.

Taken together, the proposed budget and corresponding reductions in the level of services that will be realized at both EPA and the state environmental agencies across the country will put protection of public health and the environment at risk.

Some of the direct impacts from the FY2020 President's Budget to the Montana (DEQ) programs include the following:

- **EPA Performance Partnership Grant** - Last year DEQ was awarded roughly \$5.4 million for the 2018 state fiscal year. The proposed budget calls for a 46 percent reduction in this grant (down to \$2.9 million) that funds programs associated with Clean Water and Clean Air Act regulation, safe drinking water protection, and hazardous waste oversight. Cuts to this core grant may have the greatest impact to DEQ's operating budget. Impacts would include:
  - Reductions to personnel and operating expenses for water quality permitting – this could translate into delays in permitting timeframes and/or potential fee increases associated with permits (stormwater construction permits, groundwater discharge permits, surface water discharge permits).
  - Reductions or delays to DEQ inspections for water quality permits listed above.
  - Reductions to Clean Air Act funding that greatly exacerbate a currently underfunded program area.
    - Staff activities would be reduced or eliminated causing delays in permit issuance, thereby increasing lawsuits (e.g. for missing deadlines) and stymie industrial and economic growth.
    - Reductions to air quality monitoring and data collection leading to less air pollution data available to the public to inform their health decisions.
    - Reductions to air quality monitoring and data collection for Clean Air Act compliance resulting in delays to plan development and implementation for areas not meeting air quality standards.
    - A reduction to this budget will have a direct impact on EPA's goal (APG)-1 of "Improve air quality by implementing pollution control measures to reduce the number of nonattainment areas. By September 30, 2019, EPA, in close collaboration with states, will reduce the number of nonattainment areas to 138 from a baseline of 166."
  - Reductions in inspections, monitoring, training, and technical assistance for public drinking water programs. (Examples are impacts to technical assistance/support for communities with drinking water issues like Flaxville, Sheridan, Whitehall, Ulm, Glendive.)
  - Reductions in inspections, compliance assistance and permitting delays for hazardous waste and solid waste facilities (refineries, landfills, and oil and gas disposal operations) resulting in potential increased illegal dumping and pollution.
  - Elimination of radon education programs, small business assistance, and alternative fuels (biodiesel) programs.
- **Superfund** – proposed reduction of \$184,000
  - These cuts would slow clean-up work that is already planned, much of which is in the headwaters of drinking water basins, like the one above Rimini that provides Helena a portion of its potable water supply.
  - Many sites in Montana will likely see delays in investigation or remediation (clean-up work). It is also reasonable to anticipate that, with fewer staff, the remaining sites will move more slowly through the federal process. Proposed cuts would require DEQ to reduce FTE supported by this funding and it would impact ongoing work.
  - Work on seven sites and multiple operable units would come to a halt and all but a few of the remaining remedial actions will likely be delayed or outright stopped as we re-prioritize. The current lack of pipeline funding is already delaying remedial action, in many cases, by years. (Pipeline funding dollars are for sites where there are no responsible parties to pay for the cleanup or where EPA does not have special account funds—funds collected after settlement. Examples of Montana sites that need pipeline dollars for work are: Ten Mile/Basin; Carpenter Snow Creek; Barkers Hughesville.)
  - Staffing reductions would have to occur if pipeline funding is further curtailed.



- Also, Montana would not be able to support or conduct preliminary assessments or site inspections (PA/SI) at potentially contaminated sites for listing on the National Priority List (NPL). Even if the PA/ SIs don't lead to NPL listing, they can be critical in identifying unacceptable risks that can be addressed by our state response program.
  - A reduction to this budget will have a direct impact on EPA's goal APG-3 of "Accelerate the pace of cleanups and return sites to beneficial use in their communities. By September 30, 2019, EPA will make an additional 102 superfund sites and 1,368 brownfields sites ready for anticipated use (RAU)."
- **Brownfields** – The Brownfields grant received by the state would be reduced by approximately 30 percent from \$673,000 annually to \$471,100. The money is used to assist local communities to assess and clean up contaminated/blighted properties across all of Montana. A budget reduction of this size would eliminate site-specific assessment and cleanup services provided by DEQ. Funding this program reduces risks these contaminated sites present to human health and the environment, and it allows for redevelopment of these properties, returning them back onto the tax base for the community.
  - In addition to directly funding cleanup and assessment work, DEQ provides outreach, grant assistance, and helps communities leverage additional state and federal dollars. During the past six years, DEQ helped local economic development corporations and cities receive \$8,074,376 in EPA competitive Brownfields grants. The proposed reduction would limit the assistance provided to EPA grantees and would likely reduce the amount of Brownfields grant funding entering the state. In addition, this proposed reduction would have a negative influence on the Montana Department of Commerce's and DEQ's ability to jointly apply for a \$1,000,000 state-wide competitive Brownfields RLF cleanup grant.
  - This proposed reduction in budget will also limit the amount of funding DEQ has been able to leverage to assist communities to address blighted and/or contaminated properties. Over the past three years DEQ's Brownfields program assisted the City of Harlowton in receiving \$1,470,000 for the assessment and cleanup of the bankrupt Chicago, Milwaukee, St. Paul Roundhouse. DEQ's Brownfields program also aided the City of Lewistown in receiving \$793,000 for the assessment and cleanup of the Central Post & Treating Company Facility. The ability to continue to achieve successes such as these will be severely limited under the proposed budget.
  - A 30 percent reduction to this budget will have a direct impact on EPA's goal APG-3 of "Accelerate the pace of cleanups and return sites to beneficial use in their communities. By September 30, 2019, EPA will make an additional 102 superfund sites and 1,368 brownfields sites ready for anticipated use (RAU)."
- **Elimination of Underground Storage Tank Leak Prevention Program funding** – There is 100 percent reduction in funding for the Underground Storage Tanks (UST) program, from \$360,000 annually to \$0. This program provides petroleum and hazardous substance release prevention and detection activities including: compliance assistance, third-party inspection oversight, UST operating permit registration, and UST construction permitting. The program provides leak prevention assistance for 3,316 active tanks at 1,119 facilities throughout Montana. This program also trains and certifies 78 installers, removers, and compliance inspectors.

If this funding were eliminated, the fees charged to owners and operators to install, modify, and maintain registration for their underground storage tanks would need to be raised commensurately to maintain the current level of service or services (staff and/or support to providers) would have to be reduced. The ability to clean-up these sites and protect human health in the area would be severely limited by these cuts.

- **Leaking Underground Storage Tanks**—The President’s proposed 2020 budget cut includes a 100 percent reduction in funding for the Leaking Underground Storage Tank (LUST) program, from \$600,000 to \$0. LUST Trust funding is used to investigate and clean up petroleum releases that have no other funding source and would otherwise remain contaminated and continue to pose a risk to human health and the environment. Petroleum release sites addressed using LUST Trust funds include the following types of sites:
  - Sites in need of investigation because petroleum contamination is present and the source is unknown.
  - Petroleum release sites where the owner is recalcitrant.
  - Petroleum release sites where the owner is does not have the ability to pay for investigation and cleanup.

DEQ seeks cost recovery for funds expended to investigate and clean up petroleum releases in all cases except where the owner is found to have an inability to pay. Cost recovered funds can then be used to address additional petroleum release sites that meet the criteria listed above. Without the LUST Trust funding that we receive from EPA, DEQ would struggle to find funding to pay for an emergency response to ensure safety for our citizens and the environment, we would have to reduce the number of sites that we investigate and clean up each year, and we would lose funding for three positions.

- **Air Quality – Clean Diesel Program** – Montana uses the diesel emission reduction program to replace school buses with buses that run on alternative fuels. The proposed 87 percent reduction in funding will severely limit or eliminate Montana’s ability to continue this program and result in increased air quality impacts.
- **Water Quality Program** grant reductions and eliminations:
  - The **non-point source program** is proposed for elimination – This program reduces pollution by way of voluntary implementation of land, soil, and water conservation practices. Non-point source pollution comes from diffuse sources, such as grazing, timber harvest, abandoned mine lands, irrigation, recreation, and septic systems. Nonpoint source pollution is largely responsible for impairing waterbodies that do not meet state water quality standards in Montana. Under Section 319, states and tribes receive grant money to support locally-led voluntary activities to reduce nonpoint source water pollution.

DEQ provides approximately \$1,000,000 each year to local watershed groups, conservation districts, educational institutions, and government entities to design and implement on-the-ground projects that reduce and prevent nonpoint source pollution. This funding must be matched by the sponsors of the project and it leverages additional in-kind support resulting in millions of dollars being spent in Montana to voluntarily clean up Montana’s water quality and in supporting land owners and local economies. DEQ has undertaken strategic planning to focus nonpoint source funding on projects that will restore natural processes (e.g., stream channel migration, floodplain connectivity, native riparian revegetation) and are likely to result in measurable improvements in water quality. If nonpoint source funding is eliminated, DEQ will only have regulatory tools to implement the Clean Water Act, not voluntary ones, placing the responsibility for cleaning up water quality with point source dischargers.

- The **Water Quality 604(b)** or Water Quality Planning Grant Funds, are slated for a 30 percent reduction from \$100,000 to \$70,000. Montana uses this grant to fund our popular water quality volunteer monitoring program and for tracking water quality changes over time, which includes the Clark Fork river nutrient and algae monitoring programs and the upcoming Bitterroot effectiveness monitoring program. These cuts would limit the number of volunteer monitoring programs we could fund.
- The **Wetlands** program has been identified for a 30 percent reduction from \$185,000 to \$129,000. This proposed cut would undermine the ability of the state to engage landowners in the protection of wetlands.
- The **Wastewater and Drinking water** State Revolving Loan programs are slated for 33% and 25% reductions annually. These cuts will result in fewer loans to communities for water and wastewater systems. It will also result in less loan forgiveness funds being available to help the many small and disadvantaged communities of Montana. A 33 and 25 percent reduction to these budgets will have a direct impact on EPA's goal APG-2 of "Empower communities to leverage EPA water infrastructure investments. By September 30, 2019, EPA will increase by \$16 billion the non-federal dollars leveraged by EPA water infrastructure finance programs (Clean Water and Drinking Water State Revolving Funds and the Water Infrastructure Finance and Innovation Act)."
- **Exchange Network** - Environmental Information Exchange Network (EN) is an Internet-based system used by state, tribal, and territorial partners to securely share environmental and health information with one another and EPA. There is a 30 percent proposed funding reduction from \$200,000 to \$60,000. This will severely limit, or eliminate, efficiencies in our ability to share information and address public health issues from a cooperative federal/state perspective.

For many years now, appropriators have targeted excesses in our federal and state bureaucracies in the interest of fiscal responsibility and protecting taxpayers from wasteful government spending. After years of budget cuts to these agencies, we find ourselves today at the point where it is increasingly difficult, if not unrealistic, "to do more with less." Further cuts in funding will result in a corresponding reduction in our State's ability to provide services at the levels needed and historically provided let alone achieve the goals and objectives outlined in EPA's strategic plan.

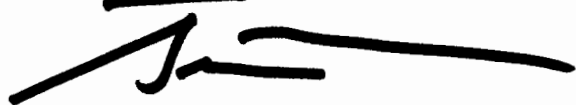
By proposing the budget for EPA that this Administration has put forward, I believe you have an obligation to explain what increased levels of air pollution, contamination to our lakes, rivers and streams, exposure to toxic chemicals, and other increased public health and environmental risks that you now see as acceptable. These drastic cuts cannot be absorbed, or simply passed onto the states, without having an impact on the environmental and public health protections that EPA and our state environmental agencies provide, putting at risk the health and economic viability of citizens we are responsible to serve.

Administrator Wheeler

April 29, 2019

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Sincerely,

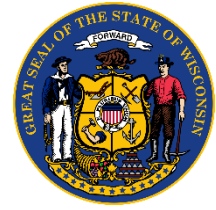
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STEVE BULLOCK

Governor

cc: Acting Director Russ Vought, Office of Management and Budget  
Senator Jon Tester  
Senator Steve Daines  
Congressman Greg Gianforte





April 16, 2019

The Honorable Andrew Wheeler  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Dear Administrator Wheeler:

As the Governors of five states from the Great Lakes region and representing 46.9 million Americans, we join those across the country in expressing our opposition to President Trump's April 10, 2019 executive order on water quality certifications, which disregards mounting environmental concerns to the public. The Clean Water Act of 1972 (CWA) is the primary federal law that governs water quality, while restoring and preserving the chemical, physical, and biological integrity of water in the United States. By passing the CWA and subsequent amendments, Congress recognized states (and authorized tribes) as a separate authority over the protection and administration of water resources. By seeking a "single point of accountability," this executive order seeks to defy statutory intent and damage the division of state, tribal, and federal authorities reflected in statutory language in the Clean Water Act.

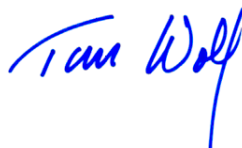
Our Great Lakes remain one of our most vital economic and ecological resources in the United States, accounting for one-fifth of the freshwater surface on the planet. As Governors, it is our duty to safeguard the Great Lakes and other waters within our boundaries. State authority to certify, revoke, or revise federal permits of discharges into waters of the United States per Section 401 is crucial to the CWA's framework of cooperative federalism. This authority allows states to maintain state water quality with respect to activities associated with federally permitted discharges.

We strongly oppose any attempt by this administration to undermine state authority and ability to enforce water quality standards. We remain committed to do what is necessary to protect sources of drinking water, public health and our environment. The residents of our states deserve to have this critical work continue unimpeded. We urge this administration to reconsider this executive order and respect the rights of states to protect our waters.

Sincerely,

A handwritten signature in blue ink that reads "Gretchen Whitmer". The signature is fluid and cursive, with the first name and last name clearly legible.

Governor Gretchen Whitmer, Michigan

A handwritten signature in blue ink that reads "Tom Wolf". The signature is written in a cursive style, with the first name and last name clearly legible.

Governor Tom Wolf, Pennsylvania

Governor J.B. Pritzker, Illinois

A handwritten signature in blue ink that reads "Tony Evers". The signature is written in a cursive style, with the first name and last name clearly legible.

Governor Tony Evers, Wisconsin

A handwritten signature in black ink that reads "Tim Walz". The signature is written in a cursive style, with the first name and last name clearly legible.

Governor Tim Walz, Minnesota